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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,311	09/01/2006	Michael Schabbach	5727-200678	9313
23643 7590 09/30/2010 BARNES & THORNBURG LLP 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204				
EXAMINER SIEFKE, SAMUEL P				
ART UNIT 1797		PAPER NUMBER		
NOTIFICATION DATE 09/30/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

indocket@btlaw.com

### Office Action Summary

**Application No.**

10/591,311

**Applicant(s)**

SCHABBACH, MICHAEL

**Examiner**

SAM SIEFKE

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 84-89 and 92-144 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 121-142 is/are allowed.
- 6) ☒ Claim(s) 84-89, 92-120, 143 and 144 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 84-89, 92-120 and 143-144 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/46887 (herein after Lundsgaard).

Lundsgaard discloses a handheld analysis device that comprises a drum magazine (fig 1, ref. 4) containing an analytic consumable (14) that is configured to receive the sample (fig. 4), a stationary conveyance base positioned within the housing (walls left and right of the drivable conveyance roll that supports the analytical consumable from tilting left or right); an analysis sensor to which the analytic consumable may be supplied along a conveyance path (fig. 2d, 2e, 2f, ref. motor 22, conveyer belt 20), a drivable conveyance roll (fig. 2d, e, f) configured to grip the analytic consumable projecting out of the drum magazine (exit hole included) and into the conveyance path and to move the gripped analytic consumable along the conveyance path, and a housing (fig. 2c) containing the drum magazine, the analysis sensor and the drivable conveyance roll. The Examiner states that the conveyer grips the analytical consumable (14) because of gravity and the friction created between the conveyer and

the consumable (fig 1). The stationary conveyance base is any surface that does not touch the drivable conveyance roll. The Examiner states that the walls to the left and right of the analytical consumable qualify as the stationary conveyance base because they are stationary and are part of the base that holds the conveyance roll within the housing. Further they give support to the analytical consumable because it does not allow the analytical consumable from tilting left or right which allows the consumable to stay in an upright fashion for ejection through the housing opening for testing. In this instant case, figure 3 and figure 2d show the path in which the analytical consumable passes and then exits the device. For instance the surface directly to the left of the drum 4 which appears to be the cover housing for the buttons and display, this surface can be a stationary conveyance base because it helps guide the analytical consumable to the exit. Without the top surface and two side surfaces the consumable gripped by the conveyer would not be held in an upright position. So it is the combination of the three conveyance surfaces that help guide the consumable when gripped by that drivable conveyance roll to the exit seen in figure 2e. A motor 16 engages the member 8 and the fins 10 so as to provide rotation and allow the consumable onto the conveyer path (page 22). The housing defines a loading opening which allows replacement of the drum with the consumables. The housing has an opening which the consumable passes to allow testing. The housing comprises a display and user input (fig. 2). Further the conveyer and motor are capable of clockwise and counterclockwise rotation to move the testing position and into a retraction position (page 22).

***Allowable Subject Matter***

Claims 121-142 are allowed.

***Response to Arguments***

Applicant's arguments filed 7/14/10 have been fully considered but they are not persuasive. Applicant argues, "Applicant asserts that new claim 143 is patentably distinct from Lundsgaard. For example, Lundsgaard does not show or disclose a stationary conveyance base on which the analytic sensor is situated and that supports thereon the analytic consumable as the drivable conveyance roll moves the analytic consumable along the stationary conveyance base. While the vertical wall of the Lundsgaard detector 40 is stationary surface, this surface does not support thereon the analytic consumable as the drivable conveyance roll moves the analytic consumable along this surface as required by applicant's new claim 143." The Examiner states that the conveyor grips the analytical consumable (14) because of gravity and the friction created between the conveyor and the consumable (fig 1). The stationary conveyance base is any surface that does not touch the drivable conveyance roll. The Examiner states that the walls to the left and right of the analytical consumable qualify as the stationary conveyance base because they are stationary and are part of the base that holds the conveyance roll within the housing. Further they give support to the analytical consumable because it does not allow the analytical consumable from tilting left or right which allows the consumable to stay in an upright fashion for ejection through the

housing opening for testing. In this instant case, figure 3 and figure 2d show the path in which the analytical consumable passes and then exits the device. For instance the surface directly to the left of the drum 4 which appears to be the cover housing for the buttons and display, this surface can be a stationary conveyance base because it helps guide the analytical consumable to the exit. Without the top surface and two side surfaces the consumable gripped by the conveyer would not be held in an upright position. So it is the combination of the three conveyance surfaces that help guide the consumable when gripped by that drivable conveyance roll to the exit seen in figure 2e.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAM SIEFKE whose telephone number is (571)272-1262. The examiner can normally be reached on Monday, Wednesday, Thursday and Friday 8am to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAM SIEFKE/  
Primary Examiner, Art Unit 1797